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& *Power Co. v. Lowry*, 79 Miss. 431. And a railroad is liable for the damage resulting from its refusal, without valid excuse, to carry a passenger back, after wrongfully over-shooting his station. *Samuels v. Richmond & Danville R. Co.*, 35 S. C. 493; *Fordyce v. Dillingham*, 23 S. W. 550 (Tex.). The company's legal duty is undoubtedly to take up passengers at its regularly designated stops, and if it does not substantially comply with that duty, it seems that only important considerations of public convenience should excuse a refusal to bring the car back. Such considerations would obviously arise where cars run frequently through crowded streets, and going backward would materially add to danger of collisions.

CHAMPERTY AND MAINTENANCE — ATTORNEY PAID OUT OF FRUITS OF LITIGATION. — An attorney agreed to defend a pending suit in return for a portion of the property in litigation. *Held*, that the agreement is not illegal. *Van Gieson v. Magoon*, 20 Haw. 146. See NOTES, p. 228.

CONFLICT OF LAWS — PERSONAL JURISDICTION — AGREEMENT TO MORTGAGE FOREIGN LAND. — The defendant company agreed to purchase the plaintiff company's mortgage debenture bonds constituting a floating charge on property in Northern and Southern Rhodesia and in England. The plaintiff contracted to give the defendant an exclusive license, renewable every five years in perpetuity, to work the plaintiff's diamondiferous land. This agreement was made in London, where interest and principal were payable. Northern Rhodesia is under English, Southern Rhodesia under Roman-Dutch law. The bonds were issued and later paid, but were never registered, as required by the Rhodesian law. Subsequently the plaintiff brought this bill for a declaration upon the validity of the license agreement. *Held*, that the license clause is invalid. *British South Africa Co. v. De Beers Consolidated Mines Limited*, 103 L. T. Rep. 4 (Eng., Ct. App., July 5, 1910).

The English rule is that the validity of a contract is determined by the law the parties intend shall govern. *Hamlyn & Co. v. Talisker Distillery*, [1894] A. C. 202. But see 23 HARV. L. REV. 1-11, 79-103, 194-208, and 260-292. All courts, however, hold that the creation of interests in land is governed by the *lex situs*. *Kerr v. Moon*, 9 Wheat. (U. S.) 565. See 20 HARV. L. REV. 382. Hence it was contended in the principal case that so far as the contract related to land in Southern Rhodesia the Roman-Dutch law applied, and that under this law the agreement to lease, given to secure the bonds, would continue in force after the bonds were paid. But the court, relying upon earlier cases, considered that in its exercise of jurisdiction *in personam* it could enforce the equities of the English mortgage law. *Ex parte Pollard*, Mont. & C. 239; *Lord Cranston v. Johnston*, 3 Ves. Jr. 170. Under that law such a clog on the equity of redemption is not allowed. *Noakes & Co. v. Rice*, [1902] A. C. 24. The cases relied upon by the court would abundantly warrant the present decree in a case involving an actual interest in land in Southern Rhodesia. See *Ex parte Pollard*, *supra*, 251. But the same result would seem possible without their aid. Through lack of registration no interest or security in Rhodesian land was obtained. See 2 NATHAN, COMMON LAW OF SOUTH AFRICA, 924. Hence the *lex situs* does not enter and only English law, with reference to which the parties contracted, can apply.

CONFLICT OF LAWS — PERSONAL JURISDICTION — JURISDICTION TO ORDER PAYMENT OF ALIMONY. — Suit was brought for a divorce and alimony. The defendant appeared and answered. A divorce was granted, and by agreement of counsel the court decreed that such alimony should be paid as it should thereafter direct, upon the application of any of the parties in interest. The defendant left the jurisdiction, and the court, upon notice being served to the

defendant's attorney of record, thereafter made an order for the payment of alimony. *Held*, that it has power to do so. *McSherry v. McSherry*, 77 Atl. 653 (Md.).

Although a divorce may be granted *ex parte* at the domicile of one of the parties, a decree for alimony, being *in personam*, is of no effect unless the court has personal jurisdiction of the defendant. *Prosser v. Warner*, 47 Vt. 667. Similarly, a court which grants a divorce cannot enjoin the defendant unless he is within its jurisdiction. See *De la Montanya v. De la Montanya*, 112 Cal. 101. *Contra*, *Kempson v. Kempson*, 63 N. J. Eq. 783. But if personal jurisdiction is once acquired, it is retained for the purpose of settling all questions involved in that suit, including the determination of a writ of error. *Fitzsimmons v. Johnson*, 90 Tenn. 416. Thus a court which has properly made an order for the payment of alimony may retain the power to modify it. *Galusha v. Galusha*, 138 N. Y. 272; *Olney v. Watts*, 43 Oh. St. 499. The decision in the principal case, therefore, seems sound. For a discussion of similar jurisdictional questions involved in awarding the custody of children, see 24 HARV. L. REV. 142.

CONSTITUTIONAL LAW — PERSONAL RIGHTS OF THE INDIVIDUAL — CAN A STATE ABOLISH INSANITY AS A DEFENSE IN CRIMINAL ACTIONS. — A statute provided that insanity should be no defense in criminal actions, but that the presiding judge might, at his discretion, commit to an insane asylum any person convicted, who in his opinion was insane. The state constitution provided that, "No person shall be deprived of life, liberty, or property without due process of law," and that, "The right to trial by jury shall remain inviolate." *Held*, the statute in question violated both the above provisions. *State v. Strasburg*, 110 Pac. 1020 (Wash.) See NOTES, p. 225.

CONSTITUTIONAL LAW — POWERS OF CONGRESS: IMPLIED POWERS — FORBIDDING INTERSTATE TRANSPORTATION OF PRODUCTS UNDER PURE FOOD LAW. — The United States brought a libel for forfeiture of goods under the Pure Food Law. A demurrer was filed on the ground that the statute was unconstitutional. *Held*, that the statute is constitutional. *United States v. Seventy-four Cases of Grape Juice*, 181 Fed. 629 (Dist. Ct., W. D. N. Y.).

The plaintiff sought to enjoin certain government officials from seizing its goods in interstate shipments, under the Pure Food Law, on the ground that the act was unconstitutional. *Held*, that the statute is constitutional. *Shawnee Milling Co. v. Temple*, 179 Fed. 517 (Circ. Ct., S. D. Ia.).

Interstate commerce is defined as intercourse and traffic among the states, including navigation and the transportation of persons and property, as well as the purchase, sale, and exchange of commodities. *County of Mobile v. Kimball*, 102 U. S. 691. Goods in the process of interstate shipment, therefore, are subject to whatever regulations Congress may impose in the proper exercise of its control over interstate commerce. See *Gibbons v. Ogden*, 9 Wheat. (U. S.) 1. But the purpose of the Pure Food Law was clearly the protection of the public health and not the regulation of commerce as such. A statute must be judged by its real purpose and not its incidental one. See *Minnesota v. Barber*, 136 U. S. 313. Since the protection of the public health is an exercise of police power, which, not being expressly given to the national government, is supposed to reside in the states, at first blush the statute would seem to be unconstitutional. But the national government as incidental to the regulation of commerce can exercise the police power and regulate commerce so as to protect the national health. See *Lottery Case*, 188 U. S. 321, 357; *COOLEY*, CONST. LIM. 723. But see 23 HARV. L. REV. 441, 445, *et seq.* Hence the statute is constitutional; but the case is interesting as showing how far the courts have departed from the real meaning of the commerce clause. See *Veazie v. Moor*, 14 How. (U. S.) 568, 574.